

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Bobby T. Sheppard,	:	<i>Death Penalty Case</i>
	:	
Petitioner,	:	Case No. 1:00cv493
	:	
-vs-	:	Judge Walter Herbert Rice
	:	
Margaret Bagley, Warden,	:	Magistrate Judge Merz
	:	
Respondent.	:	

MOTION TO WITHDRAW AS COUNSEL AND MEMORANDUM IN SUPPORT

Now comes Murray Murphy Moul + Basil LLP, by and through Geoffrey J. Moul, Co-Counsel for Petitioner, and respectfully requests permission to withdraw as counsel for Petitioner in this matter. Withdrawal will not prejudice Mr. Sheppard, and in fact, since Mr. Moul does not intend to seek appointment in the Court of Appeals, withdrawal at this time is in the interest of Mr. Sheppard.

This case has been fully litigated in this Court. The matter was filed in 2000, and thereafter, in 2004, the Magistrate issued a Report and Recommendation that a Writ of Habeas Corpus be granted. The Warden then objected to that R&R on June 11, 2004 (as did Sheppard on limited grounds), and those Objections have been fully briefed. Indeed, the objections have been fully briefed since January 25, 2005. There has been no activity in this case for nearly two years. The next step in this case is for the Court to issue a ruling on the objections and then, win or lose, for the Warden to file an appeal or for Mr. Sheppard to file a request for certificate of appealability. Mr. Moul, however, is no longer comfortable that his representation will best serve Mr. Sheppard. During the last two years, Mr. Moul has ended his criminal practice and, with the exception of this case,

all habeas representation. As a result, he is no longer comfortable that he has kept up with legal developments in the relevant areas to warrant his representation of Mr. Sheppard on appeal. For that reason, Mr. Moul does not intend to seek appointment on appeal and, given the passage of time and the stage of this matter, seeks to withdraw here in this case at this time.

Mr. Sheppard needs counsel who will have time to familiarize himself or herself with the record in time to prepare a certificate of appealability or to appeal. Counsel on appeal should be the same preparing the certificate of appealability. Mr. Moul believes it is in the best interest of Mr. Sheppard, therefore, to have new counsel appointed at this stage. Mr. Sheppard, of course, continues to be represented by the Ohio Public Defender's Office.

To that end, Mr. Doug Funkhouser, who is qualified to represent Mr. Sheppard, has indicated an intention to represent Mr. Sheppard. A motion to substitute counsel is submitted contemporaneously herewith, including his resume.

In short, Mr. Moul seeks leave to withdraw. Inasmuch as Mr. Moul's withdrawal will cause no prejudice to Respondent or affect any deadlines in this matter, Mr. Moul respectfully requests that this should be granted.

A proposed Order has been sent to Magistrate Judge Merz via electronic mail pursuant to the Electronic Filing Policies and Procedures Manual for the United States District Court for the Southern District of Ohio.

Respectfully submitted,

s/Geoffrey J. Moul

Geoffrey J. Moul (0070663)

Brian K. Murphy (0070654)

Murray Murphy Moul + Basil LLP

1533 Lake Shore Drive

Columbus, Ohio 43215

Telephone: (614) 488-0400

Facsimile: (614) 488-0401

Email: moul@mmmb.com

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Charles L. Wille
Carol Ann Ellensohn
Assistant Attorney General
Capital Crimes Section
30 E. Broad Street, 23rd Floor
Columbus, OH 43215

s/Geoffrey J. Moul